



# House of Representatives

General Assembly

**File No. 363**

January Session, 2015

Substitute House Bill No. 6705

*House of Representatives, April 1, 2015*

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT REQUIRING THE PREVAILING WAGE BE PAID ON  
CONSTRUCTION PROJECTS THAT RECEIVE FINANCIAL  
ASSISTANCE FROM THE STATE OR ANY AGENCY OF THE STATE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1      Section 1. (NEW) (*Effective July 1, 2015*) (a) For purposes of this  
2      section:

3      (1) "Business organization" means any sole proprietorship,  
4      partnership, corporation, limited liability company, association, firm or  
5      other form of business or legal entity;

6      (2) "Financial assistance" means any and all forms of loans, cash  
7      payments, extensions of credit, guarantees, equity investments, tax  
8      abatements or any other form of financing; and

9      (3) "Project" means any construction, remodeling, refinishing,  
10     refurbishing, rehabilitation, alteration or repair of any property owned  
11     by a business organization.

12 (b) On and after January 1, 2016, if the state or any agency of the  
13 state, including, but not limited to, the Department of Economic and  
14 Community Development and Connecticut Innovations, Incorporated,  
15 provides financial assistance to any business organization for any  
16 project of such business organization, the state or any agency of the  
17 state shall require, as a condition of providing such financial  
18 assistance, that any contract entered into by the business organization  
19 for such project shall contain the following provision: "The wages paid  
20 on an hourly basis to any person performing the work of any  
21 mechanic, laborer or worker on the work herein contracted to be done  
22 and the amount of payment or contribution paid or payable on behalf  
23 of each such person to any employee welfare fund, as defined in  
24 subsection (i) of section 31-53 of the general statutes, shall be at a rate  
25 equal to the rate customary or prevailing for the same work in the  
26 same trade or occupation in the town in which such construction,  
27 remodeling, refinishing, refurbishing, rehabilitation, alteration or  
28 repair project is being undertaken. Any contractor who is not obligated  
29 by agreement to make payment or contribution on behalf of such  
30 persons to any such employee welfare fund shall pay to each  
31 mechanic, laborer or worker as part of such person's wages the amount  
32 of payment or contribution for such person's classification on each pay  
33 day."

34 (c) Any contractor or subcontractor who knowingly or wilfully  
35 employs any mechanic, laborer or worker in any project receiving  
36 financial assistance from the state or any agency of the state for such  
37 project, at a rate of wage on an hourly basis that is less than the rate  
38 customary or prevailing for the same work in the same trade or  
39 occupation in the town in which such project is located, or who fails to  
40 pay the amount of payment or contributions paid or payable on behalf  
41 of each such person to any employee welfare fund, or in lieu thereof to  
42 the person, as provided by subsection (b) of this section, shall be fined  
43 not less than two thousand five hundred dollars but not more than five  
44 thousand dollars for each offense and (1) for the first violation, shall be  
45 disqualified from bidding on contracts for projects for which the state  
46 or any agency of the state provides financial assistance until the

47 contractor or subcontractor has made full restitution of the back wages  
48 owed to such persons and for an additional six months thereafter, and  
49 (2) for subsequent violations, shall be disqualified from bidding on  
50 contracts for projects for which the state or any agency of the state  
51 provides financial assistance until the contractor or subcontractor has  
52 made full restitution of the back wages owed to such persons and for  
53 not less than an additional two years thereafter. In addition, if it is  
54 found by the contracting officer representing the business organization  
55 that any mechanic, laborer or worker employed by the contractor or  
56 any subcontractor directly on the site for the work covered by the  
57 contract has been or is being paid a rate of wages less than the rate of  
58 wages required by the contract to be paid as required by this section,  
59 the business organization may (A) by written or electronic notice to the  
60 contractor, terminate such contractor's right to proceed with the work  
61 or such part of the work as to which there has been a failure to pay  
62 said required wages and to prosecute the work to completion by  
63 contract or otherwise, and the contractor and the contractor's sureties  
64 shall be liable to the business organization for any excess costs  
65 occasioned the business organization thereby, or (B) withhold payment  
66 of money to the contractor or subcontractor. The contracting business  
67 organization shall, not later than two days after taking such action,  
68 notify the Labor Commissioner, in writing or electronically, of the  
69 name of the contractor or subcontractor, the project involved, the  
70 location of the work, the violations involved, the date the contract was  
71 terminated and steps taken to collect the required wages.

72 (d) The Labor Commissioner may make complaint to the proper  
73 prosecuting authorities for the violation of any provision of subsection  
74 (c) of this section.

75 (e) The Labor Commissioner shall predetermine the prevailing rate  
76 and the amount of payment or contributions paid or payable on behalf  
77 of each person to any employee welfare fund, as defined in subsection  
78 (i) of section 31-53 of the general statutes, as amended by this act, in  
79 each town where such contract is to be performed, in the same manner  
80 as provided in subsection (d) of section 31-53 of the general statutes, as

81 amended by this act.

82 Sec. 2. Section 31-53 of the general statutes, as amended by section 1  
83 of public act 14-44, is repealed and the following is substituted in lieu  
84 thereof (*Effective July 1, 2015*):

85 (a) Each contract for the construction, remodeling, refinishing,  
86 refurbishing, rehabilitation, alteration or repair of any public works  
87 project by the state or any of its agents, or by any political subdivision  
88 of the state or any of its agents, shall contain the following provision:  
89 "The wages paid on an hourly basis to any person performing the  
90 work of any mechanic, laborer or worker on the work herein  
91 contracted to be done and the amount of payment or contribution paid  
92 or payable on behalf of each such person to any employee welfare  
93 fund, as defined in subsection (i) of this section, shall be at a rate equal  
94 to the rate customary or prevailing for the same work in the same  
95 trade or occupation in the town in which such public works project is  
96 being constructed. Any contractor who is not obligated by agreement  
97 to make payment or contribution on behalf of such persons to any such  
98 employee welfare fund shall pay to each mechanic, laborer or worker  
99 as part of such person's wages the amount of payment or contribution  
100 for such person's classification on each pay day."

101 (b) Any contractor or subcontractor who knowingly or wilfully  
102 employs any mechanic, laborer or worker in the construction,  
103 remodeling, refinishing, refurbishing, rehabilitation, alteration or  
104 repair of any public works project for or on behalf of the state or any of  
105 its agents, or any political subdivision of the state or any of its agents,  
106 at a rate of wage on an hourly basis that is less than the rate customary  
107 or prevailing for the same work in the same trade or occupation in the  
108 town in which such public works project is being constructed,  
109 remodeled, refinished, refurbished, rehabilitated, altered or repaired,  
110 or who fails to pay the amount of payment or contributions paid or  
111 payable on behalf of each such person to any employee welfare fund,  
112 or in lieu thereof to the person, as provided by subsection (a) of this  
113 section, shall be fined not less than two thousand five hundred dollars

114 but not more than five thousand dollars for each offense and (1) for the  
115 first violation, shall be disqualified from bidding on contracts with the  
116 state or any political subdivision until the contractor or subcontractor  
117 has made full restitution of the back wages owed to such persons and  
118 for an additional six months thereafter, and (2) for subsequent  
119 violations, shall be disqualified from bidding on contracts with the  
120 state or any political subdivision until the contractor or subcontractor  
121 has made full restitution of the back wages owed to such persons and  
122 for not less than an additional two years thereafter. In addition, if it is  
123 found by the contracting officer representing the state or political  
124 subdivision of the state that any mechanic, laborer or worker  
125 employed by the contractor or any subcontractor directly on the site  
126 for the work covered by the contract has been or is being paid a rate of  
127 wages less than the rate of wages required by the contract to be paid as  
128 required by this section, the state or contracting political subdivision of  
129 the state may (A) by written or electronic notice to the contractor,  
130 terminate such contractor's right to proceed with the work or such part  
131 of the work as to which there has been a failure to pay said required  
132 wages and to prosecute the work to completion by contract or  
133 otherwise, and the contractor and the contractor's sureties shall be  
134 liable to the state or the contracting political subdivision for any excess  
135 costs occasioned the state or the contracting political subdivision  
136 thereby, or (B) withhold payment of money to the contractor or  
137 subcontractor. The contracting department of the state or the political  
138 subdivision of the state shall, not later than two days after taking such  
139 action, notify the Labor Commissioner, in writing or electronically, of  
140 the name of the contractor or subcontractor, the project involved, the  
141 location of the work, the violations involved, the date the contract was  
142 terminated, and steps taken to collect the required wages.

143 (c) The Labor Commissioner may make complaint to the proper  
144 prosecuting authorities for the violation of any provision of subsection  
145 (b) of this section.

146 (d) For the purpose of predetermining the prevailing rate of wage  
147 on an hourly basis and the amount of payment or contributions paid or

148 payable on behalf of each person to any employee welfare fund, as  
149 defined in subsection (i) of this section, in each town where such  
150 contract is to be performed, the Labor Commissioner shall (1) hold a  
151 hearing at any required time to determine the prevailing rate of wages  
152 on an hourly basis and the amount of payment or contributions paid or  
153 payable on behalf of each person to any employee welfare fund, as  
154 defined in subsection (i) of this section, upon any public work within  
155 any specified area, and shall establish classifications of skilled,  
156 semiskilled and ordinary labor, or (2) adopt and use such appropriate  
157 and applicable prevailing wage rate determinations as have been made  
158 by the Secretary of Labor of the United States under the provisions of  
159 the Davis-Bacon Act, as amended.

160 (e) The Labor Commissioner shall determine the prevailing rate of  
161 wages on an hourly basis and the amount of payment or contributions  
162 paid or payable on behalf of such person to any employee welfare  
163 fund, as defined in subsection (i) of this section, in each locality where  
164 any such public work is to be constructed, and the agent empowered  
165 to let such contract shall contact the Labor Commissioner, at least ten  
166 but not more than twenty days prior to the date such contracts will be  
167 advertised for bid, to ascertain the proper rate of wages and amount of  
168 employee welfare fund payments or contributions and shall include  
169 such rate of wage on an hourly basis and the amount of payment or  
170 contributions paid or payable on behalf of each person to any  
171 employee welfare fund, as defined in subsection (i) of this section, or in  
172 lieu thereof the amount to be paid directly to each person for such  
173 payment or contributions as provided in subsection (a) of this section  
174 for all classifications of labor in the proposal for the contract. The rate  
175 of wage on an hourly basis and the amount of payment or  
176 contributions to any employee welfare fund, as defined in subsection  
177 (i) of this section, or cash in lieu thereof, as provided in subsection (a)  
178 of this section, shall, at all times, be considered as the minimum rate  
179 for the classification for which it was established. Prior to the award of  
180 any contract, purchase order, bid package or other designation subject  
181 to the provisions of this section, such agent shall certify to the Labor  
182 Commissioner, either in writing or electronically, the total dollar

183 amount of work to be done in connection with such public works  
184 project, regardless of whether such project consists of one or more  
185 contracts. Upon the award of any contract subject to the provisions of  
186 this section, the contractor to whom such contract is awarded shall  
187 certify, under oath, to the Labor Commissioner the pay scale to be used  
188 by such contractor and any of the contractor's subcontractors for work  
189 to be performed under such contract.

190 (f) Each employer subject to the provisions of this section, [or]  
191 section 31-54 or section 1 of this act shall (1) keep, maintain and  
192 preserve such records relating to the wages and hours worked by each  
193 person performing the work of any mechanic, laborer and worker and  
194 a schedule of the occupation or work classification at which each  
195 person performing the work of any mechanic, laborer or worker on the  
196 project is employed during each work day and week in such manner  
197 and form as the Labor Commissioner establishes to assure the proper  
198 payments due to such persons or employee welfare funds under this  
199 section, [or] section 31-54 or section 1 of this act, regardless of any  
200 contractual relationship alleged to exist between the contractor and  
201 such person, provided such employer shall have the option of keeping,  
202 maintaining and preserving such records in an electronic format, and  
203 (2) submit monthly to the contracting agency, or the state or any  
204 agency of the state providing financial assistance pursuant to section 1  
205 of this act, by mail, electronic mail or other method accepted by such  
206 agency, a certified payroll that shall consist of a complete copy of such  
207 records accompanied by a statement signed by the employer that  
208 indicates (A) such records are correct; (B) the rate of wages paid to  
209 each person performing the work of any mechanic, laborer or worker  
210 and the amount of payment or contributions paid or payable on behalf  
211 of each such person to any employee welfare fund, as defined in  
212 subsection (i) of this section, are not less than the prevailing rate of  
213 wages and the amount of payment or contributions paid or payable on  
214 behalf of each such person to any employee welfare fund, as  
215 determined by the Labor Commissioner pursuant to subsection (d) of  
216 this section, and not less than those required by the contract to be paid;  
217 (C) the employer has complied with the provisions of this section,

218 [and] section 31-54 and section 1 of this act; (D) each such person is  
219 covered by a workers' compensation insurance policy for the duration  
220 of such person's employment, which shall be demonstrated by  
221 submitting to the contracting agency the name of the workers'  
222 compensation insurance carrier covering each such person, the  
223 effective and expiration dates of each policy and each policy number;  
224 (E) the employer does not receive kickbacks, as defined in 41 USC 52,  
225 from any employee or employee welfare fund; and (F) pursuant to the  
226 provisions of section 53a-157a, the employer is aware that filing a  
227 certified payroll which the employer knows to be false is a class D  
228 felony for which the employer may be fined up to five thousand  
229 dollars, imprisoned for up to five years, or both. This subsection shall  
230 not be construed to prohibit a general contractor from relying on the  
231 certification of a lower tier subcontractor, provided the general  
232 contractor shall not be exempted from the provisions of section 53a-  
233 157a if the general contractor knowingly relies upon a subcontractor's  
234 false certification. Notwithstanding the provisions of section 1-210, the  
235 certified payroll shall be considered a public record and every person  
236 shall have the right to inspect and copy such records in accordance  
237 with the provisions of section 1-212. The provisions of subsections (a)  
238 and (b) of section 31-59 and sections 31-66 and 31-69 that are not  
239 inconsistent with the provisions of this section, [or] section 31-54 or  
240 section 1 of this act apply to this section. Failing to file a certified  
241 payroll pursuant to subdivision (2) of this subsection is a class D felony  
242 for which the employer may be fined up to five thousand dollars,  
243 imprisoned for up to five years, or both.

244 (g) Any contractor who is required by the Labor Department to  
245 make any payment as a result of a subcontractor's failure to pay wages  
246 or benefits, or any subcontractor who is required by the Labor  
247 Department to make any payment as a result of a lower tier  
248 subcontractor's failure to pay wages or benefits, may bring a civil  
249 action in the Superior Court to recover no more than the damages  
250 sustained by reason of making such payment, together with costs and  
251 a reasonable attorney's fee.



252 (h) The provisions of this section do not apply where the total cost  
 253 of all work to be performed by all contractors and subcontractors in  
 254 connection with new construction of any public works project is less  
 255 than four hundred thousand dollars or where the total cost of all work  
 256 to be performed by all contractors and subcontractors in connection  
 257 with any remodeling, refinishing, refurbishing, rehabilitation,  
 258 alteration or repair of any public works project is less than one  
 259 hundred thousand dollars.

260 (i) As used in this section, [and] section 31-54 and section 1 of this  
 261 act, "employee welfare fund" means any trust fund established by one  
 262 or more employers and one or more labor organizations or one or  
 263 more other third parties not affiliated with the employers to provide  
 264 from moneys in the fund, whether through the purchase of insurance  
 265 or annuity contracts or otherwise, benefits under an employee welfare  
 266 plan; provided such term shall not include any such fund where the  
 267 trustee, or all of the trustees, are subject to supervision by the Banking  
 268 Commissioner of this state or any other state or the Comptroller of the  
 269 Currency of the United States or the Board of Governors of the Federal  
 270 Reserve System, and "benefits under an employee welfare plan" means  
 271 one or more benefits or services under any plan established or  
 272 maintained for persons performing the work of any mechanics,  
 273 laborers or workers or their families or dependents, or for both,  
 274 including, but not limited to, medical, surgical or hospital care  
 275 benefits; benefits in the event of sickness, accident, disability or death;  
 276 benefits in the event of unemployment, or retirement benefits.

This act shall take effect as follows and shall amend the following sections:

Section 1	July 1, 2015	New section
Sec. 2	July 1, 2015	31-53

**LAB**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
Labor Dept.	GF - Cost	32,424	64,847
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	12,532	25,063
Various State Agencies	Various - See Below	See Below	See Below
Quasi-Public Agencies	Various - See Below	See Below	See Below
Treasurer, Debt Serv.	GF - See Below	See Below	See Below

Note: Various=Various; GF=General Fund

**Municipal Impact:** None

### **Explanation**

The bill requires agencies including, but not limited to, the Department of Economic and Community Development (DECD) and Connecticut Innovations, Inc. to include a prevailing wage for workers on any construction-related projects as a condition for any financial assistance.

State agencies such as DECD have full discretion in developing financial assistance packages for individual businesses and projects. Presuming a business applies for and accepts state financial assistance, there may be (1) a cost to the state or (2) no cost to the state. The fiscal impact would vary on a case by case basis; it is therefore unclear what the net impact would be.

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.

The following scenarios provide illustrative examples of both these situations.

*Scenario 1: Potential Cost to the State*

Company A intends to build a new manufacturing facility at a total project cost of \$5 million. The company will finance \$4 million of the project with company funds. The company applies to DECD for a \$1 million loan.

The company agrees to pay prevailing wages in order to receive state funds. It is determined that the prevailing wage requirement increases the cost of the project by \$500,000. Company A has no further funds to finance the additional cost. DECD agrees to increase the loan to the company to \$1.5 million. The net impact is a \$500,000 additional cost to the state.

*Scenario 2: No Cost to the State*

Company B intends to build a new processing facility at a total project cost of \$10 million. The company will finance \$8 million of the project with company funds. The company applies to DECD for a \$2 million loan.

The company agrees to pay prevailing wages in order to receive state funds. It is determined that the prevailing wage requirement increases the cost of the project by \$1 million. Company B identifies additional company funds that are available to cover the additional costs. DECD and Company B agree to the \$2 million loan as initially requested by the company. The net impact is no cost to the state.

*Funding Source*

The primary funding source for most business assistance programs is GO bond funds. Future General Fund debt service costs may therefore be incurred sooner under the bill to the degree that the bill causes authorized GO bond funds to be expended more rapidly than they otherwise would have been.

*Enforcement*

The bill expands the number of projects for which the prevailing wage is required. The Labor Department would require one dedicated Wage Enforcement Agent to ensure compliance, which results in an annualized cost of \$89,910 (\$64,847 for salary and \$25,063 for fringe costs).

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 6705*****AN ACT REQUIRING THE PREVAILING WAGE BE PAID ON CONSTRUCTION PROJECTS THAT RECEIVE FINANCIAL ASSISTANCE FROM THE STATE OR ANY AGENCY OF THE STATE.*****SUMMARY:**

This bill extends prevailing wage requirements to physical development projects undertaken by businesses with financial assistance from the state or a state agency, including the Department of Economic and Community Development and Connecticut Innovations, Inc. It applies to any construction, remodeling, refinishing, refurbishing, rehabilitation, alteration, or repair project of a property owned by a business that receives state financial assistance for the project on or after January 1, 2016 ("covered projects"). State financial assistance includes state loans, cash payments, credit extensions, guarantees, equity investments, tax abatements, or any other state financing for the project.

Under the bill, any contractor or subcontractor the business retains to work on a covered project must pay its construction workers on the project the prevailing wage for their respective occupations. The bill also (1) subjects contractors and subcontractors on covered projects to enforcement provisions similar to those under the prevailing wage law for public works projects and (2) extends the public works prevailing wage law's record-keeping requirements to include covered projects.

EFFECTIVE DATE: July 1, 2015

**PREVAILING WAGE REQUIREMENTS**

By law, certain public works contracts must have a provision that requires a contractor and any subcontractor to pay their construction

workers the prevailing wage (i.e., wages and benefits equal to those that are customary or prevailing for the same work, in the same trade or occupation, in the same town). Contractors who do not provide benefits at the same rate required under the prevailing wage must make up the difference in hourly wages.

The bill requires a business that receives state financial assistance on or after January 1, 2016 to include the same prevailing wage provision in all of its contracts for covered projects. The state agency providing the assistance must impose this requirement as a condition for receiving assistance.

As under the public works prevailing wage law, the labor commissioner must determine the prevailing wage for each trade or occupation and location (in practice, the commissioner uses rates established by the U.S. Department of Labor). Unlike the public works prevailing wage law, the bill does not require the business to (1) obtain the applicable prevailing wage rates from the labor commissioner prior to advertising for the contracts or (2) include the prevailing wage rates in proposals for the contracts.

### ***Enforcement***

Similar to the public works prevailing wage law, contractors or subcontractors on the business's covered project who knowingly or willfully fail to pay their employees the prevailing wage can be fined between \$2,500 and \$5,000 per offense. In addition, a first-time violator must fully repay back wages and cannot bid on other covered projects until six months after it has done so. A contractor or subcontractor with subsequent violations must fully repay back wages and cannot bid on other covered projects until two years after it has done so.

Similar to the public works prevailing wage law, if a business finds that a contractor or subcontractor on its covered project is not paying the prevailing wages, the business can (1) terminate the contractor's right to continue working on the project and hold the contractor or its sureties liable for any excess costs to complete the work or (2) withhold

payments to the contractor or subcontractor. If the business takes either of these steps it must notify the labor commissioner, within two days, of the contractor's or subcontractor's name, the project involved and its location, the violations involved, the date the contract was terminated, if applicable, and steps taken to collect the required wages. The labor commissioner can complain to the proper prosecuting authorities for violations.

***Record Keeping Requirements***

The bill expands the public works prevailing wage law's record keeping requirements to include covered projects. Among other things, this requires contractors and subcontractors on a project to submit monthly certified payroll records to the state or state agency that provided the financial assistance to the business. The records must contain the same information required under the public works prevailing wage law, including:

1. detailed payroll records for each employee and
2. a signed statement that (a) the records are correct, (b) the employer paid the required prevailing wages, (c) the employer met the prevailing wage law's requirements, (d) each employee was covered under workers compensation insurance, (e) the employer does not receive kickbacks as defined under federal law, and (f) the employer understands the penalties for knowingly filing false payroll records.

The penalties for failing to comply with the certified payroll records requirement or knowingly filing false payroll records are also the same as under the public works prevailing wage law (class D felonies with up to a \$5,000 fine, five years imprisonment, or both).

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/12/2015)